

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 01-0302

**Use Tax
For Tax Year 1999**

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ISSUES

I. Use Tax—Volvo Loader

Authority: Mechanics Laundry & Supply, Inc. v. Indiana Department of State Revenue, 650 N.E.2d 1223 (Ind. Tax 1995); IC 6-2.5-5-3; 45 IAC 2.2-3-13; 45 IAC 2.2-5-61

Taxpayer protests the imposition of use tax on its purchase of a Volvo loader.

STATEMENT OF FACTS

Taxpayer operates a trucking company, which hauls stone, dirt, sand, and other materials for hire. As the result of an audit, the Indiana Department of Revenue ("Department") issued a proposed use tax assessment. Taxpayer protests that a Volvo loader taxed by the Department is exempt from sales and use tax. Further facts will be supplied as necessary.

I. Use Tax—Volvo Loader

DISCUSSION

Taxpayer protests the imposition of use tax on a Volvo loader. The Department issued a proposed use tax assessment on the loader based on its finding that the loader is not used exclusively for the mining of sand and public transportation, and that taxpayer's use of the loader does not constitute a mining operation, but rather is a service provided by taxpayer to its customers. The Department refers to 45 IAC 2.2-3-13, which states:

Tangible personal property, purchased in Indiana or elsewhere in a retail transaction from a retail merchant, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax measured by the gross retail income received from such property, unless the Indiana gross retail tax has been collected at the point of purchase.

Taxpayer protests that it uses the loader to extract sand from a pit owned by its customer and load it onto trucks it owns for transport to its customer's locations. The relevant statute is IC 6-2.5-5-3(b), which states:

Transactions involving manufacturing machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for direct use in the production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or furnishing of other tangible personal property.

In support of its protest, taxpayer supplied documentation establishing that it did extract and then transport sand for its customers.

While it is true that taxpayer extracted the sand for its customer from the customer's pit, the Indiana Tax Court explained in Mechanics Laundry:

In the case of the equipment exemption, our supreme court has held that the terms used are not separate and distinct. *Indiana Department of State Revenue v. Cave Stone, Inc. (1983), N.E.2d 520*. Indeed, the supreme court stated that the terms used "are not mutually exclusive;...[rather, they] overlap and at times encompass each other." *Id. at 524*.

Mechanics Laundry & Supply, Inc. v. Indiana Department of State Revenue, 650 N.E.2d 1223, 1228 (Ind. Tax 1995)

Therefore, in order to qualify for the exemption provided in IC 6-2.5-5-3(b), a purchaser must use the equipment in the production of tangible personal property. In the instant case, taxpayer did not own the sand when it was in the ground, on its trucks, or at any other time. Taxpayer was not extracting and producing sand for sale, but rather was extracting and transporting sand as a service for its customer. Since taxpayer was not producing sand for sale, the exemption provided in IC 6-2.5-5-3(b) does not apply here.

Taxpayer also argues that the loader is used in public transportation. The relevant regulation is 45 IAC 2.2-5-61. 45 IAC 2.2-5-61(a) states:

The state gross retail tax shall not apply to the sale and storage or use in this state of tangible personal property which is directly used in the rendering of public transportation of persons or property.

45 IAC 2.2-5-61(f) states in relevant part:

The purchase, storage, or use of tangible personal property used for activities prior to or subsequent to the rendition of public transportation is subject to tax. For purposes of this regulation [45 IAC 2.2], transportation means the movement, transporting, or carrying of persons or property from one place to another and

includes loading and unloading of persons or property into or from transportation vehicles.

Since the loader is used in the loading of property (sand) into transportation vehicles, it is involved in public transportation, and so is exempt under 45 IAC 2.2-5-61.

FINDING

Taxpayer's protest is sustained.

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